

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2021-374-E - ORDER NO. 2022-358

MAY 13, 2022

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| IN RE: | Application of Dominion Energy South |) | ORDER APPROVING |
| | Carolina, Incorporated for Approval to Sell |) | TRANSFER AND SALE OF |
| | Real Property in Charleston, South Carolina |) | PROPERTY |
| | (Sand Dunes Property) |) | |

I. INTRODUCTION

This matter comes before the Public Service Commission of South Carolina (“Commission”) on the application of Dominion Energy South Carolina, Inc. (“DESC” or the “Company”) for approval to sell real property located in Charleston County, South Carolina (“Sand Dunes Property” or “Property”). The sale and transfer of the Property to the highest bidder, JLLM, LLC, is hereby approved.

II. FACTS AND PROCEDURAL HISTORY

DESC filed its application (“Application”) with the Commission on December 9, 2021, pursuant to Section 58-27-1300 of the South Carolina Code of Laws (2015) and Regulation 103-823 of the South Carolina Code of State Regulations (2012), seeking the Commission’s approval of the proposed sale. Additionally, DESC requested a waiver of the competitive bid requirement found in its Code of Conduct (Order No. 2021-358, dated May 14, 2021, issued in Docket No. 2019-386-E) for the sale of utility property in excess of one million dollars (\$1,000,000). DESC stated “[t]he purpose and intent of the Code of Conduct is to protect against affiliate preferences and to ensure that the Company disposes

of real property in a manner that promotes fair and equitable treatment of the parties to the transaction, potential bidders, and DESC's customers." (Application, p. 2).

In 2021, DESC entered into a Purchase Sale Agreement with SDC Island Resident Club, LLC (a Delaware limited liability company and affiliate of Beemok Capital, LLC), whereby the SDC Island Resident Club, LLC would purchase the Sand Dunes Property for nineteen million (\$19,000,000) dollars, subject to Commission approval. The Property is located on Sullivan's Island in Charleston County, South Carolina. DESC describes the Sand Dunes Property as a 3.46-acre parcel of land, with improvements thereon, consisting of a club house, four (4) picnic shelters, and a swimming pool.¹

In correspondence filed with the Commission on January 13, 2022, the South Carolina Office of Regulatory ("ORS") Staff notified the Commission it had reviewed DESC's Application and the waiver of the bid requirement. ORS also reviewed the requirements of South Carolina Code Ann. Section 58-27-1300 and Order No. 2021-358 regarding the sale of the Property. ORS concluded it "does not object to the Company's request to a waiver of the bid requirement as this is a method to expedite the sale process." (ORS correspondence of January 13, 2022, p. 2).

On January 13, 2022, this docket came before the Commission at a business meeting. Chairman Justin T. Williams presided. Ultimately, the Commission issued a Directive, requesting more information from DESC. Specifically, the Commission sought:

First, clarification of the name "SDC Island Resident Club, LLC" is needed for the record. Furthermore, additional justification from Dominion Energy South Carolina, Inc. is needed regarding the market value of the Sand Dunes Property, and an independent appraisal, as well as the basis

¹ TMS Nos. 523-12-00-019, 523-12-00-020, 523-12-00-021, 523-12-00-022, 523-12-00-023.

for the waiver of the bid requirement mandated by the Code of Conduct Governing the Relationship among DESC, SCANA Corporation, Dominion Energy, Inc. and Certain Other Affiliates, pursuant to Order No. 2021-358 (dated May 14, 2021, issued in Docket No. 2019-386-E).

(Directive Order 2022-39.)

On February 3, 2022, this docket came back before the Commission. As requested, DESC provided an appraisal of the Property to the Commission. DESC also submitted a letter with additional information about the prospective buyer and the basis for the waiver of the bid requirement. However, the Commission declined to grant approval of the sale without the Company's compliance with Commission Order No. 2021-358.

Commission Order 2022-115 denied DESC's request to sell the Sand Dunes Property; denied DESC's request to waive the competitive bid requirement; and ordered DESC to obtain competitive bids for the sale of the Property. *See* Order 2022-115. Specifically, the Commission directed DESC to "obtain competitive bids for the sale of this property so as to obtain fair market value. Upon the conclusion of the bidding process, Dominion shall report back to the Commission and update its request for approval of the property transfer." *Id.*

Following Commission Order No. 2022-115, dated February 18, 2022, DESC initiated a public bidding process for the Property. (*See* DESC letter dated April 11, 2022). The Company prepared an advertisement informing the public of the availability of the Property. On February 18, 2022, the advertisement was published in *The Post & Courier*, *The Atlanta Journal Constitution*, and *The Charlotte Observer* newspapers; on DESC's real estate sales website; and to various real estate trade organizations and brokers. *Id.* The various advertisements informed the public that the property was available and referred

interested parties to DESC's website, which also articulated the Terms and Conditions of the competitive bidding process. *Id.*

In response to the advertisements, the Company received three (3) bids to purchase the Sand Dunes Property. (DESC letter dated April 11, 2022). JLLM, LLC submitted the highest bid, and according to the Company, it is not affiliated with DESC, its parent, or any of its affiliates. *Id.* SDC Island Resident Club, LLC did not submit a bid. *Id.*

In its letter to the Commission, DESC confirmed "[t]he competitive bidding process is now complete." (DESC letter dated April 11, 2022). DESC entered into a Purchase Sale Agreement with JLLM, LLC on April 7, 2022, and the Company "concluded that \$16.2 million is a fair price for the Sand Dunes Property." *Id.* As a result, "the Company is requesting approval to sell the Sand Dunes Property to the highest bidder, JLLM, LLC." *Id.*

On April 28, 2022, ORS submitted a letter to the Commission outlining the additional discovery requests it filed upon the Company. After its review of DESC's responses as well as the Company's letter dated April 11, 2022, ORS stated it "does not object to the Company's request for approval to sell the Property." (ORS correspondence dated April 28, 2022.)

III. APPLICABLE LAW

The Commission has the authority to regulate and supervise the sale of utility property by electric utilities:

The Commission as provided for by the South Carolina Constitution and as vested with power and jurisdiction by the South Carolina General Assembly, performs the following general functions:

A. Regulation and supervision of the privately-owned electric utilities as to rates, charges, services, facilities, practices, accounting procedures, the purchase, sale or lease of utility property and the issuance of securities...

S.C. Code Ann. Regs 103-810 (2012).

“The commission may, upon petition: (1) ascertain and fix just and reasonable standards, classifications, regulations, practices, or service to be furnished, imposed, observed, and followed by any or all electrical utilities....” S.C. Code Ann. § 58-27-140 (2015). “Applications are submitted to the Commission for any authorization or permission which the Commission is empowered to grant under its statutory authority ...” S.C. Code Ann. Regs. 103-823.

Section 58-27-1300 of the South Carolina Code of Laws requires electric utilities to obtain approval from the Commission when they seek to "sell, assign, transfer, lease, consolidate, or merge its utility property" with a fair market value in excess of one million dollars (\$1,000,000). Section 58-27-1300 provides as follows:

No electrical utility, without the approval of the commission and compliance with all other existing requirements of the laws of the State in relation thereto, may sell, assign, transfer, lease, consolidate, or merge its utility property, powers, franchises, or privileges, or any of them, except that any electrical utility which has utility property, the fair market value of which is one million dollars or less, may sell, assign, transfer, lease, consolidate, or merge this property without prior approval of the commission. The commission may, at its discretion, hold a hearing on the request of an electrical utility to sell, assign, transfer, lease, consolidate, or merge its utility property, powers, franchises, or privileges, or any of them. An electric utility seeking approval of a transfer under this provision shall serve a copy of the application on the Office of Regulatory Staff. For purposes of this section, "utility property" shall include property used and useful to provide customers with electric service and which has been properly included in the electric

utility's rate base, including construction work in progress or property held to serve future customers. Utility property that has been transferred to nonutility accounts must continue to be treated as utility property under this provision for five years following the transfer.

S.C. Code Ann. § 58-27-1300 (2015).

Additionally, a Commission-approved Code of Conduct governs the relationship among DESC, SCANA Corporation, Dominion Energy, Inc. and certain other affiliates, pursuant to Order No. 2021-358 (dated May 14, 2021, issued in Docket No. 2019-386-E) (“Code of Conduct” or “Code”). The Code of Conduct contains reporting requirements for real property transactions, including specific requirements for the transfer of property as well as the bidding process.

The Code requires DESC to engage in a competitive bidding process for sales of real property with an appraised value in excess of \$1,000,000 (“Bid Requirement”). *See* Code of Conduct, Paragraphs III (C)(3)(b); IV(C)(1),(2)(a). Furthermore, “any utility land or real property transfers between DESC and...any other party, shall be made at Market Value.” *Id.*

Market value is defined as “the price at which property, goods, or services would change hands in an arm's-length transaction between a buyer and a seller without any compulsion to engage in a transaction, and both having reasonable knowledge of the relevant facts.” Code of Conduct, Paragraph I, Definitions. In order to determine prevailing market value, an appraisal takes place, and the appraised value must be determined by a state-certified independent appraiser. *See* Code of Conduct, Paragraph III (C)(3)(b), fn. 1.

Finally, in accordance with the FERC Uniform System of Accounts prescribed for public utilities, as adopted by the Commission, any sales proceeds attributable to the

structures, furniture, fixtures, equipment and other personal property will be credited as salvage to the accumulated provision for depreciation of the property. (*See* DESC correspondence dated December 9, 2021 and April 11, 2022.) Any gain realized from sale of the land will be recorded in Account 421.1000 entitled “Gain on Dispositional Property,” while any loss realized from sale of the land will be recorded in Account 421.2000 entitled “Loss on Disposition of Property.” *Id.* DESC states the Property has been removed from the Company’s base rate calculations and is, therefore, not included within the Company’s rate base for electric and gas operations. *Id.* Thus, the sale of the Property would not directly affect rate payers.

IV. FINDINGS OF FACT

1. The Commission has the authority to regulate and supervise the sale of utility property by an electric utility. DESC appropriately sought Commission approval of the proposed sale of the property that is the subject of this request.

2. The Property has an appraised value in excess of one million dollars (\$1,000,000). (*See Confidential Appraisal.*)

3. The Commission denied DESC's December 9, 2021, request to grant a waiver of the bidding process required by Order No. 2021-358, and therefore, the original sales agreement between DESC and SDC Island Resident Club, LLC was not approved.

4. DESC has now completed the competitive bidding process for the Property, as required by Order No. 2021-358. (*See DESC letter dated April 11, 2022.*)

5. The Commission finds three (3) bids were received by DESC to purchase the Sand Dunes Property through the competitive bidding process, with the highest bid coming from JLLM, LLC. (*DESC letter dated April 11, 2022.*)

6. The Commission finds JLLM, LLC is not affiliated with DESC, its parent, or any of its affiliates. (*DESC letter dated April 11, 2022.*)

7. The Commission finds DESC entered into a contract with JLLM, LLC, to sell the Property for sixteen million, two hundred thousand dollars (\$16,200,000). (*DESC letter dated April 11, 2022.*)

8. ORS reviewed DESC's request and does not object to the Company's request for approval to sell the Property. (*ORS correspondence dated April 28, 2022.*)

V. CONCLUSIONS OF LAW

1. The Commission has the power and jurisdiction to regulate and supervise the sale of utility property by DESC pursuant to South Carolina Code of State Regulations 103-810 (2012) and South Carolina Code of Laws Section 58-27-1300 (2015).

2. A Code of Conduct governs the relationship among DESC, SCANA Corporation, Dominion Energy, Inc. and certain other affiliates, pursuant to Order No. 2021-358 (dated May 14, 2021, issued in Docket No. 2019-386-E).

3. The Code of Conduct contains reporting requirements for real property transactions, including specific requirements for the transfer of property and the bidding process. *See* Code of Conduct, Order No. 2021-358, Paragraphs III (C)(3)(b); IV(C)(1),(2)(a).

4. The Commission approves DESC's competitive bidding process initiated on February 18, 2022, as required by the Code of Conduct for sales of real property with an appraised value in excess of one million dollars (\$1,000,000). (Order No. 2021-358.)

5. The Commission approves the sale of the Property to JLLM, LLC as requested by DESC pursuant to Section 58-27-1300 of the South Carolina Code of Laws and the Code of Conduct. (Order No. 2021-358.)

VI. ORDERING PARAGRAPHS

IT IS THEREFORE ORDERED:

1. The Application of Dominion Energy South Carolina, Inc. seeking Commission approval of the transfer and sale of the Sand Dunes Property located at Sullivan's Island in Charleston, South Carolina, to JLLM, LLC is approved.

2. In accordance with the FERC Uniform System of Accounts prescribed for public utilities, as adopted by the Commission, any sales proceeds attributable to the structures, furniture, fixtures, equipment and other personal property will be credited as salvage to the accumulated provision for depreciation of the property. Any gain realized from sale of the land will be recorded in Account 421.1000 entitled “Gain on Disposition of Property,” while any loss realized from sale of the land will be recorded in Account 421.2000 entitled “Loss on Disposition of Property.”

3. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



A handwritten signature in blue ink, appearing to read "Florence P. Belser", is written over a horizontal line.

Florence P. Belser, Vice Chair
Public Service Commission of
South Carolina